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No. 329

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

HUMBLE PIPE LINE COMPANY,
Petitioner,

versus

W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of Bossier Parish, Louisiana,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA

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Shreveport, Louisiana, July 31, 1963.

LECONTE, SHREVEPORT, LOUISIANA

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA

Petitioner, Humble Pipe Line Company (a Delaware corporation) respectfully prays that a writ of certiorari issue to review a judgment of the Court of Appeal, Second Circuit of the State of Louisiana (affirming a judgment of the Twenty Sixth Judicial District Court of Louisiana in and for the Parish of Bossier, State of Louisiana), entered February 7, 1963, and made final by the refusal on May 14, 1963, of the Supreme Court of the State of Louisiana to grant writs of certiorari or review to such Court to review its decision.

OPINIONS BELOW

The opinion of the Louisiana District Court is not reported but is reproduced as Appendix I hereto. It also appears at Page 43 of the Transcript. The opinion of the Court of Appeal, Second Circuit, State of Louisiana, is reported at 151 So. 2d 575 and is also reproduced as Appendix II hereto. It is further found at Page 113 of the Transcript. The denial of the Louisiana Supreme Court of writs of certiorari and review to the Court of Appeal is not officially reported, but is unofficially reported at 152 So. 2d. 591 and for completeness has been reproduced as Appendix III hereto. It is also found at Page 227 of the Transcript.

JURISDICTION

The judgment of the Court of Appeal, Second Circuit, State of Louisiana, was entered on February 2, 1963 (Transcript, Page 113). Application for rehearing was applied for by petitioner (Transcript, Page 124 A) and denied April 1, 1963 (Transcript, Page 125). Petitioner then applied to the Supreme Court of Louisiana for writs of certiorari or review (Transcript, Page 132) to review the decision of the Court of Appeal, Second Circuit. On May 14, 1963, the Louisiana Supreme Court formally denied the Application (Transcript, Page 227), thus making final the judgment of the Court of Appeal, Second Circuit, State of Louisiana.(1) Jurisdiction is thus conferred upon the Court by 28 U.S.C.A. 2101(C).

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(1) Article 2167, Louisiana Code of Civil Procedure.

QUESTION PRESENTED

The question presented for decision in this case is whether the State of Louisiana may lawfully levy and collect ad valorem taxes upon a pipe line belonging to petitioner and located within the confines of Barksdale Air Force Base (a military establishment of the United States), the land of which was donated to the United States of America without reservation and with consent of the Legislature of the State of Louisiana, and further whether the court below was correct in holding that the United States had waived its exclusive jurisdiction under Article I, Section 8, Clause 17 of the Constitution of the United States by the mere purchase of public utility services from the State of Louisiana or its subdivisions and delivered at the gates of the military establishment and by the payment to the State of Louisiana of sums in reimbursement of expenses incurred by the State in educating children of military personnel in the public school system of the State (not conducted upon the Base).

STATUTES INVOLVED

The question presented requires interpretation of Article I, Section 8, Clause 17 of the Constitution of the United States of America, which provides as follows:

> "The Congress shall have power . . . .
>
> "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten miles square), as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exer-

cise like Authority over all places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

In addition, certain statutes of the State of Louisiana giving consent of the Legislature to the acquisition of property as permitted by the United States and ceding jurisdiction thereto by the Constitution are collaterally involved. Relevant portions of these are set forth as Appendix IV hereto.

STATEMENT OF THE CASE

This action is a suit for refund to recover general ad valorem taxes paid under protest to the Sheriff and Ex-Officio Tax Collector for the Parish of Bossier, State of Louisiana. The taxes involved were levied and assessed for the year 1953 by the State of Louisiana and its political subdivisions on two trunk pipe lines of the petitioner extending a distance of 2.91 miles within the limits of Barksdale Air Force Base, a military post or establishment of the United States. Pursuant to State law, petitioner paid the taxes under protest giving timely notice of its intention to file suit and filed suit in the Twenty Sixth Judicial District Court for the Parish of Bossier, State of Louisiana, claiming refund of such taxes upon the following grounds:

"That under the laws of the United States and State of Louisiana, the exclusive jurisdiction acquired by the United States over the federal area described

> [Barksdale Field] completely ousted all jurisdiction and authority of the State and its political subdivisions within such area (including that of taxation), and that the State and the political subdivisions thereof have at all times since been without jurisdiction to assess any property therein for the purpose of ad valorem taxation or to impose such taxes thereon — no such authority having been conferred by Act of Congress." (Tr., p. 7).

It was expressly stipulated after issue was joined by the defendant that:

> "No Act of Congress of the United States specifically grants to the State of Louisiana jurisdiction and power to levy and collect taxes of the character involved in this suit." (Admission 5, Tr., p. 15).

At this point, it might be well to note that there was before the court below two other cases involving the taxation of pipe lines owned by Natural Gas & Oil Corporation and Mississippi River Fuel Corporation. These latter cases although never formally consolidated with petitioner's case were tried at the same time and were decided both by the District Court and the Court of Appeal on the same day in one opinion. The latter cases (i.e., those of Natural Gas & Oil Corporation and Mississippi River Fuel Corporation) involved oil field pipe lines owned by parties holding oil and gas leases from the United States of America on land which, although forming a part of Barksdale Air Force Base had been transferred to the Department of Interior for purposes of mineral development. Petitioner in the present case is not a party to any such lease, has no lease or other contract

with the United States of America calling for the payment of taxes of any type and its pipe line does not extend across any portion of the property transferred to the Department of Interior. Petitioner merely has a servitude or right of way across the main portion of the Air Field and is involved in no way with the area or contracts discussed in the Court's opinion concerning the parties to the other actions which were decided by the court below.

Virtually all of the facts in the case were stipulated, the only witness being Colonel Alfred J. Hanlon, Jr., Base Commander of Barksdale Field, whose testimony was not disputed. In essence, the evidence and facts stipulated revealed the following:

In 1930, the City of Shreveport, the Board of Commissioners of the Bossier Levy District, an agency of the State of Louisiana, and the State of Louisiana donated to the United States of America with consent of the Legislature of the State approximately 22,000 acres of land in Bossier Parish, Louisiana. During the years 1930 through 1932, the United States constructed extensive improvements required for the maintenance of a military air force base upon the lands acquired at a cost of many millions of dollars. The air force base is now known as "Barksdale Field" or "Barksdale Air Force Base." Barksdale Field (which is one of the largest of the air force bases employing about eight thousand people, including both military and civilian) was at the trial a major base of the Strategic Air Command ("S.A.C.") and constituted a vital part of the Strategic Air Command's Global Com-

munications system. It was characterized by Colonel Hanlon, Base Commander, as one of the nation's first lines of defense in the event of a national emergency and is maintained in a state of constant alert so that it could be placed on a war-time footing almost immediately. It was stipulated that the Base has been used continuously as a military post in accordance with the purposes for which the lands upon which it was situated were acquired by the United States and the United States has at all times possessed and exercised such jurisdiction and sovereign legislative and judicial power over the lands as were vested by virtue of the Constitution and laws of the United States and of the State of Louisiana. The petitioner owns two interstate oil pipe lines extending 2.91 miles in Barksdale Field. The public at no time had been permitted freedom of access to any portion of the lands within the limit of Barksdale Field traversed by petitioner's pipe lines and petitioner's employees have never been permitted upon the premises for the purposes of inspection or maintenance of the lines except when accompanied by military guard or escort in the presence of whom all such work must be performed.

Although the Air Force purchased public utility services at the gates of the post from State or Parish authorities, the distribution of such utility services within the confines of the post was exclusively done by the United States. Children of air force personnel attended public schools off the Base and the State was reimbursed to some extent for the cost of educating such children by the Federal Government. The Base has its own fire

and police department and within its confines, the United States performs all services that would normally be performed by a parish, state or municipality.

The District Court rejected petitioner's claims holding:

> *"There either exists within the jurisdiction of the State the authority to levy taxes of every nature and kind on the property within the physical area known as Barksdale Air Force Base when said property is owned by other than the government or its personnel or this authority to tax has been removed altogether. . . .*
>
> "There is also evidence in this case showing that the Air Force Base receives certain services from the political subdivisions of the State such as water and school facilities for base personnel. In line with the case of IBM versus Ott, 89 S 2d 193, and Silas Mason Company versus Tax Commission, 302 U. S. 186, *the acceptance of these services by the Federal Government would indicate that the United States has not manifested an intent to accept exclusive jurisdiction.*" (Emphasis supplied)

The case was appealed by petitioner to the Court of Appeal, Second Circuit, State of Louisiana (a review of whose decision is herein sought) which affirmed the lower court's opinion holding:

> "The sole question which is presented in these cases is whether or not the State of Louisiana, and its taxing authorities of Bossier Parish, may levy ad valorem taxes upon the privately owned properties of the respective plaintiffs, used and maintained by

them for their commercial purposes, and situated within the enclosure of Barksdale Air Force Base. . . ."

The court held that the United States did not have exclusive jurisdiction over the Air Force Base inasmuch as the record disclosed the United States "is dependent upon the State and Parish authorities for public utilities and school facilities" and "the acceptance of such services has manifested an intent on the part of the Federal Government not to exercise control in those respects." It further held, in passing, that because the Department of Interior had executed an oil and gas lease on land transferred to the Department which provided that the lessee under such lease would pay certain taxes levied by the State, the United States had waived its exclusive jurisdiction over all of the property embraced within the limits of the Base including that portion upon which the petitioner's pipe line was located although such land was not covered by the lease in question, and petitioner was not a party to the lease. Review of this decision was sought to the Louisiana Supreme Court by application for writ of certiorari and review which was refused by the Supreme Court in an opinion stating: "The judgment complained of is correct."

ARGUMENT

I. The United States was Initially Vested with Exclusive Jurisdiction over Barksdale Field.

The question presented in this case is whether the State of Louisiana has jurisdiction to levy an ad valorem tax upon petitioner's pipe line located upon Barksdale Field, a Federal enclave acquired pursuant to Article I, Paragraph 8, Clause 17 of the United States Constitution, which provides:

> "The Congress shall have power . . . .
>
> "To exercise exclusive Legislation in all Cases whatsoever, over such District . . . as may . . . become the Seat of the Government of the United States, and to exercise like authority over all places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

There is no question in this case of the consent of the State Legislature to the acquisition. Act 12 of 1892 of the Legislature of the State of Louisiana provides as follows:(2)

> "The United States, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, may acquire and occupy any land in Louisiana required for the purposes of the federal government. *The United States shall have exclusive jurisdiction over the*

(2) See also Act 31 of 1942 re-enacting and amending this Act. Both are shown in full at Appendix IV hereto.

property during the time that the United States is the owner or lessee of the property. The property shall be exempt from all taxation, assessments, or charges levied under authority of the state.

"The state may serve all civil and criminal process issuing under authority of Louisiana on the property acquired by the United States." (Emphasis supplied)

Neither is there any dispute that exclusive jurisdiction was initially accepted by the United States. Such acceptance is presumed in absence of evidence of a contrary intent.

> *Silas Mason Co., Inc. v. Tax Commission of Washington*, 302 U.S. 186, 58 S. Ct. 233, 82 L. ed. 187 (1937);
>
> *S.R.A., Inc. v. State of Minnesota*, 327 U.S. 558, 66 S. Ct. 749, 90 L. ed. 851 (1945).

In this case resort to such presumption is unnecessary. It has been stipulated by the parties that the conveyances to the United States were made with the understanding or condition that it would establish and operate a military air force base upon the land conveyed and that shortly after such conveyance, and that all times since then, such an air force base has in fact been maintained. It has also been stipulated that since the establishment of the base *"the United States has at all times possessed and exercised such jurisdiction and sovereign legislative and judicial power over the lands acquired . . . to the extent that the same was vested by virtue of the Constitution and laws of the United States and of the State of Louisiana,"*

II. If Such Exclusive Jurisdiction is Still Present the Tax Cannot be Levied by the State.

Nor can there be any doubt that if the United States still possesses exclusive jurisdiction the State has no power or authority to levy the tax.

This Court has many times held that unless there is an express reservation or qualification contained in the consent of the State Legislature when the property is acquired or unless some relinquishment of jurisdiction by the United States is affirmatively shown, the State has no jurisdiction to levy or collect taxes within the confines of a government enclave such as Barksdale Field. Perhaps the leading case is *Surplus Trading Co. v. Cook*, 281 U.S. 647, 50 S. Ct. 455, 74 L. ed. 1091 (1929); which involved an attempt by the State of Arkansas to assess a personal property tax upon properties owned by a private individual located within the confines of Camp Pike, an Army base. This Court held such a tax could not be levied.

> "The supreme court of the state, although recognizing that the status of Camp Pike was as just stated and that the property on which the tax was laid was in much the greater part located therein, rejected the contention that the tax laws of the state could not be applied to property so located consistently with the constitutional provision cited.
>
> "It is not unusual for the United States to own within a state lands which are set apart and used for public purposes. Such ownership and use without more do not withdraw the lands from the jurisdiction of the state. On the contrary, the lands remain part of her territory and within the oper-

ation of her laws save that the latter cannot affect the title of the United States or embarrass it in using the lands or interfere with its right of disposal.

"A typical illustration is found in the usual Indian reservation set apart within a state as a place where the United States may care for its Indian wards and lead them into habits and ways of civilized life. Such reservations are part of the state within which they lie and her laws, civil and criminal, have the same force therein as elsewhere within her limits, save that they can have only restricted application to the Indian wards. Private property within such a reservation, if not belonging to such Indians, is subject to taxation under the laws of the state. Another illustration is found in two classes of military reservations within a state — one where the reservation, although established before the state is admitted into the Union, is not excepted from her jurisdiction at the time of her admission; and the other where the reservation, although established after the admission of the state, is established either upon lands set apart by the United States from its public domain or upon lands purchased by it for the purpose without the consent of the legislature of the state. In either case, unless there be a later and affirmative cession of jurisdiction by the state, the reservation is a part of her territory and within the field of operation of her laws, save that they can have no operation which would impair the effective use of the reservation for the purposes for which it is maintained. If there be private property within such a reservation which is not held or used as an incident of military service it may be subjected to taxation like other private property within the state.

"As respects such a military reservation, — that is, one which is neither excepted from the jurisdiction of the state at the time of her admission nor established upon lands purchased therefor with the consent of her legislature, — the State undoubtedly may cede her jurisdiction to the United States and may make the cession either absolute or qualified as to her may appear desirable, provided the qualification is consistent with the purposes for which the reservation is maintained and is accepted by the United States. And where such a cession is made and accepted it will be determinative of the jurisdiction of both the United States and the State within the reservation.

"But Camp Pike is not in the same class with any of the reservations of which we have spoken and should not be confused with any of them. Nor should it be confused with military or other reservations within a territory of the United States. *It is not questioned, nor could it well be, that Camp Pike comes within the words, 'forts, magazines, arsenals, dock-yards, and other needful buildings,' in the constitutional provision. The land therefor was purchased by the United States with the consent of the legislature of the state in 1917. The constitutional provision says that Congress shall have power to exercise 'exclusive legislation in all cases whatsoever' over a place so purchased for such a purpose. 'Exclusive legislation' is consistent only with exclusive jurisdiction.* It can have no other meaning as to the seat of government, and what it means as to that it also means as to forts, magazines, arsenals, dockyards, etc. *That no divided jurisdiction respecting the seat of government is intended is not only shown by the terms employed but is a matter of public history. Why*

as to forts, magazines, arsenals, dockyards, etc., is the power given made to depend on purchase with the consent of the legislature of the state, if the jurisdiction of the United States is not to be exclusive and that of the state excluded?

"*The question is not an open one.* It long has been settled that where lands for such a purpose are purchased by the United States with the consent of the state legislature the jurisdiction theretofore residing in the state passes, in virtue of the constitutional provision, to the United States, thereby making the jurisdiction of the latter the sole jurisdiction.

* * *

"For the reasons which have been stated we are of opinion that the supreme court of the state erred in holding that her tax laws could be applied to personal property within Camp Pike consistently with § 8, Cl. 17, of article 1 of the Constitution, and therefore that the judgment of that court must be reversed." (Emphasis supplied)

At the same term of court, this Court held that the mere granting of a servitude or easement, such as is here held by petitioner, to a railroad company does not affect the question. The Court held:

"The mere fact that the portion of the reservation in question is actually used as a railroad right of way is not controlling on the question of jurisdiction. Rights of way for various purposes, such as for railroads, ditches, *pipe lines*, telegraph and telephone lines, across Federal reservations, may be entirely compatible with exclusive jurisdiction ceded to the United States. In Benson v. United States,

146 U.S. 325, 330, 36 L. ed. 991, 994, 13 Sup. Ct. Rep. 60, the jurisdiction of the Federal court was sustained with respect to an indictment for murder committed on a portion of the Fort Leavenworth Military Reservation in Kansas which was used for farming purposes. In Arlington Hotel Co. v. Fant, supra, the jurisdiction of the United States was upheld as to the portion of the reservation there in question which had been leased for use as a hotel. While the grant of the right of way to the railroad company contemplated a permanent use, this does not alter the fact that the *maintenance of the jurisdiction of the United States over the right of way, as being within the reservation, might be necessary in order to secure the benefits intended to be derived from the reservation.*" (Emphasis supplied)

(United States v. Unzeuta, 281 U.S. 138, 50 S. Ct. 284, 74 L. ed. 774, 775)

In *Standard Oil Co. v. California*, 291 U. S. 242, 54 S. Ct. 381, 78 L. ed. 775 (1931), these principles were reaffirmed:

"Appellant challenges the validity of the taxing act as construed by the Supreme Court. The argument is that since the State granted to the United States exclusive legislative jurisdiction over the Presidio, she is now without power to impose taxes in respect of sales and deliveries made therein. This claim, we think, is wellfounded; and the judgment below must be reversed.

"In three recent cases—Arlington Hotel Co. v. Fant, 278 U.S. 439, 73 L. ed. 447, 49 S. Ct. 227; United States v. Unzeuta, 281 U.S. 138, 74 L. ed. 761, 50 S. Ct. 284, and Surplus Trading Co. v. Cook, 281

U.S. 647, 74 L. ed 1091, 50 S. Ct. 455 — we have pointed out the consequences of cession by a State to the United States of jurisdiction over lands held by the latter for military purposes. Considering these opinions, it seems plain that by the Act of 1897 California surrendered every possible claim of right to exercise legislative authority within the Presidio — put that area beyond the field of operation of her laws. Accordingly, her Legislature could not lay a tax upon transactions begun and concluded therein.

"Arlington Hotel Co. v. Fant, 278 U.S. 439, 73 L. ed. 447, 49 S. Ct. 227, denied the power of Arkansas by legislation to modify the liability of innkeepers within a reservation ceded by her to the United States.

"United States v. Unzeuta, 281 U.S. 138, 74 L. ed. 761, 50 S. Ct. 284, affirmed the exclusive jurisdiction of the United States over crimes committed within the reservation lying within Nebraska. Jurisdiction had been ceded by the State.

"Surplus Trading Co. v. Cook, 281 U.S. 647, 74 L. ed. 1091, 50 S. Ct. 455, ruled that land within Arkansas purchased by the United States for military purposes with the State's consent was under their exclusive jurisdiction. Private personal property therein was declared not subject to taxation by the State.

"The principle approved in those cases applies here. A State can not legislate effectively concerning matters beyond her jurisdiction and within territory subject only to control by the United States."

III. The Court Below Held the United States Had Waived Its Exclusive Jurisdiction.

A reading of the opinion of the court below and of the opinion which it affirmed will disclose that these principles were not in fact questioned by the court. Neither the District Court nor the Court of Appeal approached the problem as though it concerned the right to levy the tax if the United States has exclusive jurisdiction over Barksdale Field,— that such a tax could not be levied is implicitly admitted by the court. The court, however, concerned itself with the question of whether in fact the United States has exclusive jurisdiction within the meaning of the constitutional provision quoted above.

The record revealed that the Government purchased utility services at the gate of Barksdale Field from the State or some of its subdivisions and also that certain payments were made to the State in reimbursement of the costs of educating children of servicemen in public schools off the Base. These facts were seized upon by the lower court as evidencing a waiver of the Government's exclusive jurisdiction over the Base. This is plain from the opinion.

> "Thus, the testimony shows conclusively that just as in the *International Business Machines Corporation* case, the Federal Government, in the operation of Barksdale Air Force Base, is dependent upon the State and Parish authorities for public utilities and school facilities. The fact that it purchases these utilities at the gate to the reservation or that the Federal Government pays to the Parish school system a per capita charge for each child of a

> serviceman attending its schools would not have the effect of making the Federal Government less dependent upon the State and Parish authorities for these services. Just as in the *International Business Machines Corporation* case, the acceptance of such services has manifested an intent on the part of the Federal Government not to exercise control in those respects."

The case referred to *(International Business Machines Corporation v. Ott)* involved the taxation of personal property in a building in New Orleans and the Louisiana Supreme Court held:

> "The fact that the Legislature of a State has ceded exclusive jurisdiction is not the controlling consideration; reference must be had to the circumstances of the case, which may well be evidence of intention on the part of the United States not to accept the grant . . . . in fact, the acceptance of such services manifested a contrary intent on the part of the Federal Government. . . ." 230 La. 666, 89 So. 2d 193 (1955).

Thus, in the instant case, notwithstanding the fact that it was stipulated that the property has at all times been used for the purposes for which donated and constitutes one of the largest air force bases in the country essential to our national defense; that petitioner has not even been permitted to go upon the Base to maintain its pipe line unless a military escort was present at all times; that no action of the Congress of the United States grants to the State jurisdiction and power to levy and collect taxes of the character involved in this suit; that the United States has possessed and exercised "such jurisdic-

tion and sovereign legislative and judicial power over the lands acquired to the extent it was vested by law in the United States"; the court nevertheless concluded that the United States has effectively waived and surrendered its exclusive jurisdiction over Barksdale Air Force Base. (Although the opinion speaks of such facts evidencing an intent "not to accept" jurisdiction — the plain import of the opinion is that jurisdiction has been relinquished or abandoned by these acts.)

IV. The Holding of the Court is Unsupported by the Evidence and is Inconsistent and Incompatible With the Actions and Interests of the United States.

There is absolutely no authority in law or reason to assume that the actions of the United States evidence any surrender of its sovereign jurisdiction. The comments of this court in *Kern-Limerick Inc. v. Scurlock*, 347 U.S. 110, 74 S. Ct. 403, 98 L. ed. 546, (1954) involving the liability of a contractor for a sales tax levied upon such a base seems particularly appropriate:

> "We are mindful, too, of the careful attention Congress has given in recent years to a proper adjustment of tax liabilities between the federal and the state sovereignties. Congress has been solicitous to see that states and their subdivisions are not unduly burdened by federal acquisition of property taxable by the states when otherwise held. It understands the burdens on local public agencies from the new federal installations and their accompanying personnel. *Provisions deemed suitable have been made.*" (Emphasis supplied)

Although the *Kern-Limerick* case deals primarily with the relationship between Government contractors and the State, Congress has been equally solicitous of the State's revenues in dealing with and balancing the equities concerning conflicts between legitimate Federal interests and the burdens placed upon States by virtue of the presence of Federal enclaves within their boundaries. Thus, a few years after the *Standard Oil Co.* case, cited above, was decided, Congress passed the well-known "Buck" Act (now found at 4 U.S.C.A. 101 through 106). This provides, with certain exceptions deemed relevant by Congress that a State may levy sales and use taxes, gasoline taxes and income taxes with respect to private transactions conducted upon areas where the Federal Government has exclusive jurisdiction. *Ad valorem taxes are not included within the category of taxes which a State may levy.* Similarly, most of the Federal leasing acts provide, in one form or the other, that the lessee shall pay certain taxes levied by the States upon their operations.(3) See 30 U.S.C.A. 189. Although not authorizing the levying of ad valorem taxes, Congress has authorized reimbursement to the states of direct sums, in some instances, for the loss from ad valorem revenues occasioned by the existence of Federal enclaves. See 20 U.S.C.A., Section 236. (In fact, it appears that these are precisely the payments which the Court below seized upon as evidencing an intention of the United States to waive exclusive jurisdiction

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(3) See also this Court's comments concerning this Act in Mid-Northern Oil Co. vs. Walker, 268 U.S. 45, 45 S. Ct. 440, 69 L. Ed. 841, (1925).

notwithstanding the fact that the payments are made *because* of such jurisdiction and its consequent loss of revenue to the states.)

Why Congress chose to exclude ad valorem taxes on property owned by private individuals within the boundaries of a Federal enclave can only be surmised. The fact that it has not authorized such taxes should suffice. However, certain very good reasons why such taxes have not been authorized come to mind — the taxes which were authorized by the "Buck" Act were all excise taxes levied upon individuals as a result of transactions occurring (and presumably authorized by the United States) within the area in question. Excise taxes are collectible from the individual as any other debt and would not interfere with the government's control of activities upon the Base. Ad valorem taxes, however, are traditionally collected only by execution upon the property involved. Thus, in the present case, assuming the tax is constitutional and petitioner does not pay it, petitioner's pipe line would be placed for auction to the public for the taxes. If the Federal Government has only concurrent jurisdiction with the State over the area or has consented to the levy and collection of the tax, it is difficult to see how it could object to the sale of the property to any person who wanted to buy it. Furthermore, it would be difficult to see how the United States could prevent the purchaser from coming onto Barksdale Field to maintain and operate the line. And yet, it is obvious the government has a very real interest in regulating and screening those who come onto the Base or who conduct operations thereon.

The Base performs all of the functions which a municipality or state would be expected to otherwise perform, maintains complete control over who enters the Base and will not permit petitioner to even inspect and maintain its pipe line without the presence at all times of armed military personnel. If petitioner's pipe line and servitude are taxed and sold, what control could the United States exercise over this?

However, even more importantly than this in the present case is the fact that the court's decision is not based upon the question of whether such a tax is consistent with exclusive Federal control (it virtually admits it is not) but upon the fact that Federal jurisdiction on the Base is not exclusive. Barksdale Field, as we have mentioned, is one of the largest air force bases in the country and is one of the principal bases of the Strategic Air Command. To say, as did the court below, that by purchasing utility services at the gate of the Base and by reimbursing the State for the revenues and costs of educating dependents of service personnel in the public schools of the State, the United States thereby waives its exclusive jurisdiction over such an installation is almost unthinkable. Certainly the surrender of exclusive jurisdiction over vital military installations by the United States should not be made to depend upon such tenuous grounds as are present in this case.

This case, however, clearly holds and if not corrected will undoubtedly serve as precedente for the fact that the United States by its actions in this case has surrendered its exclusive jurisdiction over the area. In the words of the District Court, "there either exists within the jurisdiction of the State the authority to levy taxes of every nature and kind on the property within the physical area known as Barksdale Air Force Base . . . or this authority to tax has been removed altogether." The court has held such authority does exist. If this is true, then it would be equally true that the states' criminal jurisdiction and all other state powers would be equally exercisable therein, except, of course, to the extent they might constitute a direct burden upon the Federal Government itself; and if this is true as to Barksdale Air Force Base, then under the decision of the court below (which has been called "correct" by the Louisiana Supreme Court) it is inevitably true as to virtually every other camp, post, air field or other military installation located within the confines of the State of Louisiana.

CONCLUSION

It is respectfully submitted that the decision of the court below is incorrect and that unless corrected will permit an unwarranted intrusion of the State's taxing powers and other jurisdiction into an area reserved by the Constitution to the jurisdiction of the United States

and that a writ of certiorari should issue in this case to review the matter and thereafter that the decision of the Court of Appeal for the Second Circuit should be reversed.

Respectfully submitted,

LEON O'QUIN,
Fifth Floor, First National Bank Bldg.,
Shreveport, Louisiana.

Attorney for Petitioner.

THOMAS A. HARRELL,
Fifth Floor, First National Bank Bldg.,
Shreveport, Louisiana,

Of Counsel.

Shreveport, Louisiana, July 31, 1963.

CERTIFICATE

I, LEON O'QUIN, attorney for the petitioner herein and a member of the Bar of the Supreme Court of the United States hereby certify that on the ..... day of August, 1968, I served copies of the foregoing petition for certiorari to the Supreme Court of the United States on the defendant, W. E. Waggonner, Sheriff and Ex-Officio Tax Collector of Bossier Parish, Louisiana, as follows:

1. By mailing a copy in a duly addressed envelope with postage prepaid to Jack P. F. Gremillion, Attorney General of Louisiana, Capitol Building, Baton Rouge, Louisiana;

2. By mailing a copy in a duly addressed envelope with postage prepaid to Carroll Buck, First Assistant Attorney General of Louisiana, Capitol Building, Baton Rouge, Louisiana; and

3. By mailing a copy in a duly addressed envelope with postage prepaid to Ferdinand A. Cashio, Assistant Attorney General of Louisiana, 1313 Centenary Boulevard, Shreveport, Louisiana;

Attorneys for the respondent.

.....

LEON O'QUIN,
Fifth Floor, First National Bank Bldg.,
Shreveport, Louisiana.

Attorney for Petitioner.

APPENDIX I

NATURAL GAS AND OIL CORPORATION
versus
W. E. WAGGONER,
Sheriff and Ex-Officio Tax Collector

No. 19,044

26TH DISTRICT COURT
BOSSIER PARISH, LOUISIANA

INTERSTATE OIL PIPE LINE COMPANY
versus
W. E. WAGGONNER,
Sheriff and Ex-Officio Tax Collector

No. 19,628

26TH DISTRICT COURT
BOSSIER PARISH, LOUISIANA

MISSISSIPPI RIVER FUEL CORPORATION
versus
W. E. WAGGONNER,
Sheriff and Ex-Officio Tax Collector

No. 20,236

26TH DISTRICT COURT
BOSSIER PARISH, LOUISIANA

OPINION OF THE COURT

These three cases were consolidated for the purpose of trial as they presented almost identical factual situations and involved the same question of law. The cases

were originally tried and submitted to Judge Frank M. Dougherty, who was temporarily assigned to this District and by written stipulation of all parties the cases have been transferred for decision to either of the present Judges of this Court.

The plaintiff's are owners of certain oil or gas pipe lines and equipment connected therewith, situated on the United States Military Reservation known as "Barksdale Air Force Base", in Ward Two of Bossier Parish, Louisiana. They have paid under protest ad valorem taxes assessed against these lines and equipment to the Tax Collector for the Parish of Bossier, State of Louisiana, and other political subdivisions having taxing authority in Ward Two of this Parish, contending that the United States Government has exclusive legislative authority over the Air Base area and that the State, and its subdivisions have no authority to levy taxes on property situated on the military reservation.

This allegation is based on the premise that the State of Louisiana had by Act 12 of 1892 ceded its jurisdiction over all lands thereafter acquired by the Federal Government for military or other governmental purposes and reserved only the right to administer criminal laws and serve civil process thereon.

It is further shown that Section 12 of Article IV of the State Constitution allowed a municipal corporation to acquire land and donate same to the Federal Government for flying fields, etc., and that the land area of

Barksdale Air Force Base was donated to the U. S. Government by the City of Shreveport pursuant to this Section.

That Article I, Paragraph 8, Clause 17 of the United States Constitution provides that the Congress shall have exclusive power over all places purchased by the United States with the consent of the State Legislature to be used for the erection of forts, magazines, arsenals, etc. Plaintiff's contend that a donation would be also covered by this provision of the United States Constitution as the use of the word "purchase" was not to be given a limited definition.

The case principally relied upon by plaintiff's is *Surplus Trading Company versus Cook*, 281 US 647, in which the US Supreme Court held that the State of Arkansas had no jurisdiction to levy a tax on blankets purchased by a surplus trading company and situated within Camp Pike, the Court having found that Camp Pike came within the specific wording of Article 1, Section 8, Clause 17, relating to "forts, magazines, arsenals, dockyards, and other needful buildings.

Since this case however, there seems to be a tendency by the court to limit the definition of "forts, magazines, arsenals, etc., as contained in the above section of the Constitution and to allow the States to exercise taxing authority on private properties situated on government reservations not specifically stated in this constitutional provision. Particularly where the property taxed has no military function and where the tax is not being imposed either directly or indirectly on the Federal Government.

The underlying principle involved in the vesting of exclusive authority and jurisdiction in the Federal Government in these situations, is to prevent the States from doing any act or levying any tax which would interfere with or impede the military powers or governmental functions of the United States.

The Supreme Court of this State has held in the case of International Business Machine Corporation versus Ott, 89 S 2n, 193, that machines leased to the Federal Government in government buildings in New Orleans were subject to the State tax. The property there involved had a much closer connection with the governmental purpose than does the property involved in the cases under consideration.

The pipelines and oil field equipment belonging to plaintiff's and sought to be taxed, has no logical connection with or benefit to the military purpose of the Air Base.

In the case of Murphy Corporation Versus Fontenot, 73 S2d 180, the Louisiana Supreme Court held that the State could impose a severance tax on gas and oil produced from wells drilled on the same military reservation as we have involved in this case. The plaintiff's attempt to distinguish that case from the one at hand in the type of tax being imposed. In all of the cases cited by the parties which have been decided by either the United States Supreme Court or the State Supreme Court, bearing on the right of the State to tax property on Federal installations, the type of tax sought to be levied has not

been the deciding factor in the decisions. The Courts have on the other hand determined the authority of the State by analyzing the relation of the property to be taxed to the governmental purpose and if no connection is found they have allowed the State to exercise taxing authority with the limited exception of the governmental installations falling specifically within the wording of Article I, Paragraph 8, Clause 17 of the Constitution, as in the Surplus Trading Company versus Cook case.

There either exists within the jurisdiction of the State the authority to levy taxes of every nature and kind on the property within the physical area known as Barksdale Air Force Base when said property is owned by other than the government or its personnel or this authority to tax has been removed altogether. The Murphy Corporation versus Fontenot case therefore has definitely decided this question insofar as the powers of the State of Louisiana over Barksdale Air Force Base are concerned.

There is little doubt left as to the intent of the United States government acting through it's Department of Interior, when it provided in its oil and gas lease to plaintiff, Natural Gas and Oil, that the lessee should pay all taxes lawfully assessed by the *State* or the United States upon *improvements*, oil and gas produced from the lands, or other rights, *property* or *assets* of the *lessee*.

This contract is binding on both the parties to same and falls clearly within the language of the Murphy Corporation case.

There is also evidence in this case showing that the Air Force Base receives certain services from the political subdivisions of the State such as water and school facilities for base personnel. In line with the case of IBM versus Ott, 89 S 2d 193, and Silas Mason Company versus Tax Commission, 302 U. S. 186, the acceptance of these services by the Federal Government would indicate that the United States has not manifested an intent to accept exclusive jurisdiction.

For the foregoing reasons the Court finds that the properties owned by all of the plaintiff's in these cases as described in the pleadings herein and located on Barksdale Air Force Base, are subject to taxation by the State of Louisiana, the Parish of Bossier and other taxing authorities of the State in this Parish. Accordingly the demands of the plaintiff's should be rejected at their costs.

Rendered on this 19th day of September, 1962.

(s) O. E. Price

JUDGE

INTERSTATE OIL PIPE LINE COMPANY
versus
W. E. WAGGONNER,
Sheriff and Ex-Officio Tax Collector

No. 19, 628

TWENTY-SIXTH JUDICIAL DISTRICT COURT,
PARISH OF BOSSIER, STATE OF LOUISIANA

JUDGMENT

THIS CAUSE having come on regularly for trial, evidence having been adduced, after hearing the arguments and briefs of counsel, the Court considering the law and the evidence to be in favor of the defendant for the reasons assigned in a written opinion filed herein on September 19, 1962:

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment herein in favor of the defendant, W. E. Waggonner, in his official capacity as Sheriff and Ex-Officio Tax Collector of Bossier Parish, Louisiana, and against the plaintiff, Interstate Oil Pipe Line Company, rejecting the latter's demands at its costs.

JUDGMENT RENDERED on September 19, 1962.

JUDGMENT READ ALOUD AND SIGNED in open Court, in Benton, Louisiana, on this the 28th day of September, A. D., 1962.

(s) O. E. PRICE

JUDGE,
TWENTY-SIXTH JUDICIAL DISTRICT COURT,
PARISH OF BOSSIER, STATE OF LOUISIANA.

APPENDIX II.

Nos. 9888, 9889, 9890

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

NATURAL GAS AND OIL CORPORATION,
Plaintiff-Appellant

v.

W. E. WAGGONNER, Sheriff and
Ex-Officio Tax Collector of Bossier Parish,
Defendant-Appellee

MISSISSIPPI RIVER RUEL CORPORATION,
Plaintiff-Appellant

v.

W. E. WAGGONNER, Sheriff and
Ex-Officio Tax Collector of Bossier Parish,
Defendant-Appellee

HUMBLE PIPE LINE COMPANY,
Plaintiff-Appellant

v.

W. E. WAGGONNER, Sheriff and
Ex-Officio Tax Collector of Bossier Parish,
Defendant-Appellee

Appealed from
Twenty-Sixth Judicial District Court of Louisiana
in and for the Parish of Bossier

Hon. O. E. Price, Judge

Shotwell & Brown;
Oliver, Digby & Fudickar;
Cook, Clark, Egan, Yancey & King;

Attorneys for Natural
Gas and Oil Corporation
and Mississippi River
Fuel Corporation,
Plaintiffs-Appellants

Blanchard, Goldstein, Walker & O'Quin,

Attorneys for
Humble Pipe Line Company,
Plaintiff-Appellant

Jack P. F. Gremillion,
Attorney General of Louisiana;
Carroll Buck, First Assistant
Attorney General of Louisiana;
Ferdinand A. Cashio, Assistant
Attorney General of Louisiana;

Attorneys for
Defendant-Appellee

Hon. George W. Hardy, Jr.
Hon. Edward L. Gladney
Hon. H. W. Ayres
Hon. James E. Bolin

Judges

AYRES, J.

In each of these cases, the respective plaintiff seeks to recover certain ad valorem taxes assessed and levied against it by the State of Louisiana and by its various taxing authorities, in Ward Two of Bossier Parish, Louisiana. The taxes which are sought to be recovered, in each instance, were paid by the plaintiff under protest, and thereafter these suits were instituted under the provisions of LSA-R.S. 47:2110.

The factual situation, identical as to plaintiffs Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, is to be distinguished from that of the plaintiff, Humble Pipe Line Company. These differences will be noted in the course of this opinion. The same legal principles are, however, generally applicable to all three cases. The record made up on the trial consists of the testimony of Col. Alfred J. Hanlon, Jr., Base Commander of Barksdale Air Force Base, who appeared for the plaintiffs, taken by deposition pursuant to stipulation of the parties, and various documentary offerings and stipulation of counsel.

From a judgment rejecting its demands, each plaintiff has appealed to this court.

The United States of America acquired from the State of Louisiana, City of Shreveport, and the Board of Commissioners of the Bossier Levee District, in the year 1930, certain lands in Bossier Parish approximating 22,000 acres. The conveyances so made were admittedly donations. Shortly thereafter, Barksdale Air Force Base was

constructed on a relatively small portion of that acreage and, since that time, the Government has continuously maintained and operated said base for military purposes.

Pertinent to the positions of Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, it may be pointed out that, in 1951, it was determined that certain of the acreage within the total area acquired by the United States of America, as aforesaid, was being drained of minerals through wells drilled on privately owned adjacent lands; consequently, jurisdiction over 2,060 acres thereof was transferred to the Department of Interior with the provision there is to be no interference with the primary use of Barksdale Air Force Base.

By virtue of a lease of said property, executed by the Department of the Interior, Natural Gas and Oil Corporation drilled certain wells productive of oil and gas, which wells, with their equipment, have been assessed and levied upon for ad valorem tax purposes. (Natural Gas and Oil Corporation subsequently merged with the Mississippi River Fuel Corporation.)

As concerns the plaintiff, Humble Pipe Line Company, the taxes herein involved were imposed against two interstate oil trunk pipelines, of 8-inch and 10-inch diameters, respectively, belonging to this plaintiff and extending a distance of 2.91 miles within the acreage acquired by the United States of America, as aforesaid, which, however, are located not within the area covered by the oil, gas, and mineral leases held by the other two plaintiffs, but within the developed area or military reservation proper.

The sole question which is presented in these cases is whether or not the State of Louisiana, and its taxing authorities of Bossier Parish, may levy ad valorem taxes upon the privately owned properties of the respective plaintiffs, used and maintained by them for their commercial purposes, and situated within the enclosure of Barksdale Air Force Base. The plaintiffs contend that the State of Louisiana ceded its right to so tax such property within the said military reservation to the Federal Government and, consequently, now lacks such power. At the very foundation of their claim, of course, is Article I, Section 8, Clause 17, of the Constitution of the United States, and Act 12 of 1892 of the Louisiana Legislature, embodied in LSA-R.S. 52:1. The constitutional provision reads as follows:

> "The Congress shall have Power * * *
>
> "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to *exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings:* * * *" (Emphasis supplied.)

The aforesaid legislative provision relied upon by the plaintiffs to support their claim of the State's cession of the power to tax in these instances reads thus:

> "The United States, in accordance with the seventeenth clause, eighth section of the first article of

the Constitution of the United States, may acquire and occupy any land in Louisiana required for the purposes of the federal government. The United States shall have exclusive jurisdiction over the propery during the time that the United States is the owner or lessee of the property. The property shall be exempt from all taxation, assessments, or charges levied under authority of the state.

"The state may serve all civil and criminal process issuing under authority of Louisiana on the property acquired by the United States."

Of the total acreage acquired by the United States of America, in the year 1930, as aforesaid, the cantonment area of Barksdale Air Force Base covers about 1,000 to 1,500 acres, and an additional improved part of the base, which includes the airfield proper, comprises another 1,500 acres leaving about 19,000 acres of unimproved land known as the East Reservation. It is in this last-mentioned area that Natural Gas and Oil Corporation and Mississippi River Fuel Corporation have their physical properties against which the ad valorem taxes have been assessed and levied.

Moreover, in *Murphy Corp. v. Fontenot* (S.Ct., 1954), 225 La. 379, 73 So.2d 180, 183, it was established that this land was set apart from the land used for the governmental purposes of the Air Force Department; in fact, there was a dividing fence between the oil field and the Air Force Base. The court there said:

"These private owners were granted the right of use and control over all instrumentalities, owned and

> constructed by them, such as drilling machines, towers, tanks and pipe lines for their private commercial purposes to explore for oil and gas and to reduce such to private ownership."

In other words, the instruments employed by the private businesses, Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, were entirely and exclusively within their own control. It might be emphasized that the land covered by the lease operations is only remotely related to the primary use of the reservation for military purposes. This was made so obvious in the *Murphy Corporation* case, supra, that the late Justice Moise, as organ of the court, found it necessary to say:

> ". . . the land leased was not to be used for the erection of a fort, magazine, arsenal, dock-yard or other needful buildings for military purposes."

The tax was not one imposed upon, or in any way affecting, property or functions of the Federal Government. In *Fort Leavenworth R. R. Co. v. Lowe*, 114 U.S. 525, 5 S.Ct. 995, 1002, 29 L.Ed. 264, 269, the Supreme Court of the United States clearly recognized the residual power of the State to tax in instances where the Federal Government does not use places acquired in the execution of it own powers. Thus, it was stated:

> "Where, therefore, lands are acquired in any other way by the United States within the limits of a state *than by purchase* with her consent, they will hold the land subject to this qualification: that if upon the forts, arsenals, or other public buildings are erected for the uses of the general government,

such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from such interference and jurisdiction of the state as would destroy or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the general government. Their exemption from state control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers. *But, when not used as such instrumentalities, the legislative power of the state over the places acquired will be as full and complete as over other places within her limits.*" (Emphasis supplied.)

Plaintiffs Natural Gas and Oil Corporation and Mississippi River Fuel Corporation contend that neither the *Murphy Corporation* case, supra, certiorari denied by Supreme Court of the United States, 348 U.S. 831, 75 S.Ct. 54, 99 L.Ed. 655, nor *Mississippi River Fuel Corporation v. Fontenot* (CCA 5), 234 F.2d 898, certiorari denied by the Supreme Court of United States, 352 U.S. 916, 77 S.Ct. 213, 1 L.Ed.2d 122, is appropriate because they involved gas gathering and severance taxes decided on principles not applicable to these cases. Despite the differences in the type of taxes involved, the principles as regards the jurisdiction of the State to tax are the same. It may be noted, too, that the provisions of the leases in the instant cases, imposing obligations on the lessees to pay taxes, are substantially the same as contained in the leases concerned in the cited cases.

The language employed in the *Murphy Corporation* case is pertinent to the issues here. There, the court stated:

"The acceptance . . . by the Secretary of War states that the property is to be used for military purposes. When the Secretary of War transferred certain portions of the land to the Department of the Interior, and the Commandant of the Air Base certified that such leases would not interfere with the governmental operations of the Air Base, we had a splendid affirmative of the position taken by the State.

"In the operation of the oil field, the lessees were not militarily engaged. The fugitive oil and gas when captured did not belong to the Federal Government but to private owners. No severance tax is levied against the Government nor is there any tax levied on the lands or the instrumentalities of the Federal Government."

Similarly, in these instances, there is no tax levied against the Federal Government or any of its instrumentalities or property. In this connection, what was said by the Supreme Court of the United States in *Esso Standard Oil v. Evans* (U. S. v. Evans), 345 U.S. 495, 73 S.Ct. 800, 97 L.Ed. 1174, is pertinent, to-wit:

"The Constitution does not extend sovereign exemption from state taxation to corporations or individuals contracting with the United States merely because their activities are useful to the government."

As to plaintiffs Natural Gas and Oil Corporation and Mississippi River Fuel Corporation, the provisions of the lease are the law of the case *(Murphy Corp. v. Fontenot,* supra). Under the terms of the lease agreement, in

Section 2, under Rentals and Royalties, (7) (K), the lessee is required

> "To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, oil and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom of purchose, and to pay all wages due workmen and employees at least twice each month in the lawful money of the United States."

The contentions of Murphy Corporation in the cited case were disregarded in the following language:

> "To follow the plaintiffs' contentions, we must give no effect to the mandatory provisions of Section 2(7) (K) of the lease in question, and we must likewise say that such a provision together with the pertinent authorities on Constitutional questions by the courts are mere abstractions affording no real protection."

Moreover, in the *Mississippi River Fuel Corporation* case, supra, answering the taxpayer's contentions with regard to the lease provision, the Fifth Circuit, Court of Appeal, said:

> "Putting to one side all the refinements which have attended the long struggles over jurisdiction, as instanced in the cases, and over the effort to throw over private operations the protective mantle of governmental immunity, all that is presented for decision in this case is whether a severer of oil and gas, who, if he had taken it from any other land in the state, would unquestionably be liable

> under the general laws of the state for the severance tax, can carve out of the fact, that it came from land which was a part of Barksdale Field, an exemption for himself against having to pay the tax on severing the oil and gas from the surface and appropriating it to his own use. For the same reason that the statute under which the exaction is made is a general excise statute, not directed at any particular person or property but at all persons who are severers, it cannot be said that the provision in the lease obliging the lessees, as one of the considerations for it, to pay the taxes, was not fully effective."

These plaintiffs in the instant cases cannot clothe themselves with the mantle of govenmental immunity any more so than could the Murphy Corporation in the cited case in the State Court, or the Mississippi River Fuel Corporation in the cited case in the Federal Court. Their sole claim to immunity is the fact that their physical properties are situated within the enclosure of Barksdale Air Force Base. This can afford them no such immunity. The lease provisions are effective to insure payment by these plaintiffs of the ad valorem taxes imposed upon their physical properties.

The circumstances evidence the intention of the United States not to accept exclusive jurisdiction over the area donated for Barksdale Air Force Base. In *International Business Machines Corporation v. Ott*, (S. Ct., 1956), 230 La. 666, 89 So.2d 193, there was involved a question of whether or not the State could levy ad valorem taxes on certain business machines owned by the plaintiff, but leased to the Federal Government, and situated at a

site over which jurisdiction had been ceded to the United States. As organ of the court, on rehearing, Chief Justice Fournet said:

> "The view of presumed acceptance of ceded jurisdiction, which was followed in certain cases, was subjected to a thorough re-examination in two suits presented to the Court in the term beginning October, 1937; James v. Dravo Contracting Company, 302 U.S. 134, 58 S.Ct. 208, 82 L.Ed. 155, and Silas Mason Co. v. Tax Commission, 302 U.S. 186, 58 S.Ct. 233, 82 L.Ed. 187."

In the *Dravo* case, immunity from a West Virginia "annual privilege tax" based on gross receipts was sought by a Pennsylvania contractor with respect to sums collected under contracts with the United States Government for the building of structures within West Virginia. One of the issues was the territorial jurisdiction of the State to impose the tax as to work done on property acquired by the Federal Government. In the cited case, the United States Supreme Court held that the tax is not laid upon the Government, its property, or officers, nor upon an instrumentality of the Government, nor yet upon the contract of the Government, and stated:

> "'*The application of the principle which denies validity to such a tax has required the observing of close distinctions in order to maintain the essential freedom of government in performing its functions, without unduly limiting the taxing power which is equally essential to both nation and state under our dual system.*'"

In the *Silas Mason* case, a similar tax was involved and the question there was whether certain of the areas

in which the contractors' work was performed were within the exclusive jurisdiction of the United States, in view of the acquisition by the United States and the provisions of the State statute. The court there stated:

> *"The mere fact that the Government needs title to property within the boundaries of a State * * * does not necessitate the assumption by the Government of the burdens incident to an exclusive jurisdiction."*

Our State Supreme Court ultimately concluded, in the *International Business Machines* case, supra, that the acceptance of services furnished by the City of New Orleans to the sites in question manifested an intent on the part of the Government not to accept exclusive jurisdiction. The court made this appropriate observation:

> "The fact that the Legislature of a State has ceded exclusive jurisdiction is not the controlling consideration; reference must be had to the circumstances of the case, which may well be evidence of intention on the part of the United States not to accept the grant. In the instant case it was shown that various services (fire protection, sewerage, water and drainage facilities, police traffic regulation) furnished by the City of New Orleans were used by the various locations, and that the United States has failed to indicate an intention to exercise control in those respects; in fact, the acceptance of such services manifested a contrary intent on the part of the Federal Government. Silas Mason Co. v. Tax Commission of Washington, supra. We think, upon further analysis and study, that the rule of Surplus Trading Co. v. Cook, 281 U.S. 647, 50 S.Ct.,

455, 456, 74 L.Ed. 1091, it [sic] not to be applied to the instant factual situation. In that case the U. S. Supreme Court was careful to point out that Camp Pike came directly within the words, ' "forts, magazines, arsenals, dockyards, and other needful buildings" ' of the constitutional provision, which decreed ' "exclusive legislation in all cases whatsoever" over a place so purchased for such a purpose.' "

The testimony shows conclusively that, just as in the *International Business Machines Corporation* case, supra, the Federal Government, in the operation of Barksdale Air Force Base, is dependent upon the State and Parish authorities for public utilities and school facilities. The fact that it purchases these utilities at the gate to the reservation or that the Federal Government pays to the parish school system a per capita charge for each child of a serviceman attending its schools would not have the effect of making the Federal Government any less dependent upon the State and Parish authorities for these services. Just as in the *International Business Machines Corporation* case, the acceptance of such services has manifested an intent on the part of the Federal Government not to exercise control in those respects.

Although the land traversed by plaintiff Humble Pipe Line Company's lines is not a part of the East Reservation of Barksdale Air Force Base, the portion of which is covered by the oil, gas, and mineral lease, or leases, involved in the companion cases, we may point out that the lease provision, Section 2, under Rents and Royalties, (7) (K), which imposed upon the lessee the obligation

to pay all State taxes, evidences an intention of the United States not to accept exclusive jurisdiction over the property embraced within the limits of the base. This plaintiff cannot clothe itself with the mantle of governmental immunity any more so than could the Murphy Corporation in the cited case in the State Court or the Mississippi River Fuel Corporation in the cited case in the Federal Court. Its sole claim to immunity is the fact its physical property is situated within the enclosure of Barksdale Air Force Base. This can afford it no such immunity.

Plaintiff Humble Pipe Line Company is vested with a servitude across the lands of Barksdale Air Force Base under which its lines pass. The existence of this real right evidences an imperfect ownership of the Government in the area traversed by the pipelines. Thus, as to the area subjected to the servitude, the Government passesses only the naked ownership.

LSA-C. C. Art. 490.

In the case of *S. R. A. v. Minnesota* (1946), 327 U.S. 558, 90 L.Ed. 851, Mr. Justice Reed, as the author of the opinion, said:

> "This Court apparently has never directly passed upon the effect on federal sovereignty of the property's transfer by the United States to private hands.
>
> "There was no requirement in the act of cession for return of sovereignty to the state when the ceded territory was no longer used for federal purposes. In the absence of some such provisions, a transfer of property held by the United States under state

cessions pursuant to Article I, § 8, Clause 17, of the constitution would leave numerous isolated islands of federal jurisdiction, unless the unrestricted transfer of the property to private hands is thought without more to revest sovereignty in the states. *As the purpose of Clause 17 was to give control over the sites of governmental operations to the United States, when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would end with the reason for its existence and the disposition of the property. We shall treat this case as though the Government's unrestricted transfer of property to nonfederal hands is a relinquishment of the exclusive legislative power.*" (Emphasis supplied.)

In that case, there was held to be a relinquishment of jurisdiction despite the fact that there was only an executory contract of sale with title remaining in the government. Here, either the Government took the lands donated to it subject to the plaintiff's existing right of servitude, or a grant of right of way was made to the plaintiff by the Government. The record does not show which was the case. Obviously, the Government acquired an imperfect title, or else it became vested with an imperfect title as to the lands traversed by the lines upon the grant of such a right of way. It either never acquired exclusive jurisdiction over the same or else, under the authority of the *S. R. A.* case, it relinquished same.

For the aforesaid reasons, the conclusion appears inescapable that the taxes imposed in these instances are against private property owned and possessed by plaintiffs, under their control and used by them in the conduct of

their commercial businesses; that the taxes are not levied against the United States of America, nor against any of its property or against any of its agencies or instrumentalities; and that the State and its taxing authorities have jurisdiction to levy and impose such taxes.

The judgments appealed are accordingly affirmed at the cost of each of the plaintiffs in its respective suit.

Affirmed.

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COURT OF APPEAL

Second Circuit

State of Louisiana

No. 9888 Natural Gas & Oil Corp. vs. W. E. Waggonner, Sheriff

9889 Mississippi River Fuel Corp. vs. W. E. Waggonner, Sheriff

9890 Humble Pipeline Co. vs. W. E. Waggonner, Sheriff

(CONSOLIDATED)

ON APPLICATIONS FOR REHEARING
BY PLAINTIFFS-APPELLANTS

REHEARING REFUSED

Apr 1 - 1963

HAROLD L. BOOTH
Clerk, Court of Appeal

APPENDIX III

SUPREME COURT OF LOUISIANA
New Orleans

No. 46,706 May 14, 1963

Humble Pipe Line Company

v.

W. E. Waggonner, Sheriff and
Ex-Officio Tax Collector of Bossier Parish

In re: Humble Pipe Line Company applying for certiorari, or writ of review, to the Court of Appeal, Second Circuit, Parish of Bossier.

Writ refused. The judgment complained of is correct.

/s/ FWS
/s/ JBF
/s/ JBH
/s/ EHMcC
/s/ WBH
/s/ JWS.

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
May 14, 1963

Harold A. Moise, Jr.
Deputy Clerk

APPENDIX IV

PARAGRAPH 2, OF SECTION 12 OF ARTICLE IV, LOUISIANA CONSTITUTION OF 1928

§ 12. Loan or pledge of public credit; relief of destitute; donations; transfers of property; bonds, leasing of health institutions; donation to U. S. for Veterans Hospital

Section 12. .

• • •

Donations to United States. Provided further, that the State, or any agency or political corporation or subdivision thereof may, through the authorized representatives thereof, donate by fee simple title, or otherwise convey, to the United States any lands, property, movable and immovable, rights of way, easements or other servitudes, or any of them, which they now own, or may hereafter acquire by purchase, donation, expropriation or otherwise, for the following public purposes; use, in connection with the improvement and maintenance of the navigation of natural waterways, the construction and improvement and maintenance of artificial navigable waterways and river and harbor works of every description and kind authorized by any Act or Acts of the Congress of the United States or Federal Statutes, or otherwise, and in connection with flood control works of every description and kind so authorized, or in connection with airports, flying fields, landing fields, parks, forest preserves, canals, irrigation districts, hospitals, agricultural experiment and research stations, military posts, and for military uses; and for the purpose of acquisition and improvement of property for such purposes, may incur debt, issue bonds and levy taxes as otherwise provided in this Constitution.

ACT 12 OF 1892 OF THE LEGISLATURE OF LOUISIANA

AN ACT

To cede jurisdiction to the United States over certain land and for the purchase and condemnation thereof.

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That the United States shall have power to purchase or condemn in the manner prescribed by law, upon making just compensation therefor, any land in the State of Louisiana, not already in use for public purposes, required for custom houses, court houses, arsenals, national cemeteries, or for other purposes of the government of the United States.

SEC. 2. Be it further enacted, etc., That the United States may enter upon and occupy any land which may have been, or may be purchased or condemned, or otherwise acquired, and shall have the right of exclusive jurisdiction over the property so acquired during the time that the United States shall be or remain the owner thereof for all purposes, except the administration of the criminal laws of said State, and the service of civil process of said State therein, and shall hold the same exempt from all State, parochial, municipal or other taxation.

ACT No. 31 OF 1942 OF THE LOUISIANA LEGISLATURE

AN ACT

To amend and re-enact Sections 1 and 2 of Act No. 12 of the Regular Session of 1892, entitled: "An Act To cede jurisdiction to the United States over certain land and for the purchase and condemnation thereof", and to repeal all acts in conflict therewith.

Section 1. Be it enacted by the Legislature of Louisiana That Sections 1 and 2 of Act No. 12 of 1892 be amended and re-enacted so as to read as follows:

Section 1. Be it enacted by the Legislature of Louisiana, That the consent of the State of Louisiana is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in this State required for sites for forts, magazines, arsenals, dockyards, and other needful buildings, or for any other purposes of the Government of the United States.

Section 2. That the United States may enter upon and occupy any land in the State of Louisiana which it has heretofore acquired, or may hereafter acquire, by purchase, condemnation, lease or otherwise, required for sites for forts, magazines, arsenals, dockyards, and other needful buildings, or for any other purposes of the Government of the United States, and shall have the right of exclusive jurisdiction over the property so acquired, during the time that the United States shall be or remain the owner or lessee thereof, for all purposes, except that the State retains the right to serve therein all civil and criminal process issuing under authority of the said State, and all lands so held and title to which is vested in the United States shall be and remain exempt from all state, parochial, municipal or other taxation, assessment or other charges which may be levied or imposed by or under authority of this State.

Section 2. That all laws or parts of laws which are in conflict with the provisions hereof are hereby repealed to the extent of such conflict.

Section 3. The necessity for the immediate passage of this act having been certified to the Legislature, by the Governor, while the legislature is in session, this act shall become effective immediately upon approval by the Governor.